

AMENDED IN ASSEMBLY JUNE 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 847

Introduced by Assembly Member ~~Charles Calderon~~ Salas

February 26, 2009

~~An act to repeal Section 6396 of the Revenue and Taxation Code, An act to amend Sections 6011 and 6012 of, and to add Part 14.5 (commencing with Section 33001) to Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 847, as amended, ~~Charles Calderon~~ Salas. Sales tax: ~~property shipped outside state.~~ *Adult Entertainment Venue Impact Fund.*

The Sales and Use Tax Law imposes a sales tax on a retailer measured by the gross receipts from the retail sale in this state of tangible personal property and a use tax on the storage, use, or other consumption of tangible personal property in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. ~~That law provides various exemptions from those taxes, including an exemption from sales tax for a sale of tangible personal property in this state, when the contract of sale requires that property to be shipped, and it is shipped, in a specified manner, to a point outside the state.~~

~~Counties and cities are authorized to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and districts are authorized to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are incorporated into these taxes.~~

~~This bill would repeal that sales tax exemption. The retail sale of tangible personal property in this state would be subject to tax, regardless~~

~~of whether a contract of sale requires the property to be shipped, and it is shipped, to a point outside the state would, in addition, impose a tax on retailers that operate adult entertainment venues, as defined, measured by the gross receipts from its sales of tangible personal property sold at retail in this state, at a rate of 20%, as provided. The tax would generally be collected, administered, and enforced in the same manner as the taxes imposed under the Sales and Use Tax Law. This bill would create the Adult Entertainment Venue Impact Fund and require that all revenues, less refunds and the costs of the administration of the tax, derived from the tax be transferred to the fund. This bill would provide that moneys in the fund, upon appropriation by the Legislature, be used to ameliorate the secondary effects of adult entertainment venues, as provided. This bill makes findings and declarations with regard to adult entertainment venues and the imposition of this tax.~~

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

~~This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.~~

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) *Adult entertainment venues adversely impact the character*
2 *of local neighborhoods by, among other things, reducing local*
3 *property values, curtailing development, and engendering many*
4 *types of criminal activities.*

5 (b) *Adult entertainment venues endanger the health, safety, and*
6 *welfare of citizens in their vicinity.*

7 (c) *These findings are consistent with, and supported by, the*
8 *findings of numerous municipalities. For example, when the City*
9 *of Los Angeles conducted a comprehensive study of adult*
10 *entertainment venues, it concluded that such establishments are*
11 *associated with higher rates of prostitution, robbery, assault, and*
12 *theft in surrounding communities.*

13 (d) *These negative secondary effects, in turn, drain public*
14 *resources dedicated to public social services, and place a*
15 *significant strain on the courts of this state.*

16 (e) *The taxes imposed by this measure are not intended as a*
17 *prohibition of legally protected forms of expression.*

18 (f) *The taxes imposed by this measure are intended to represent*
19 *a balancing of competing interests. Specifically, these taxes are*
20 *designed to balance the need to combat the negative secondary*
21 *effects of adult entertainment venues against the legally protected*
22 *rights of adult entertainment providers.*

23 (g) *The taxes imposed by this measure are not intended to allow*
24 *or license any business, establishment, or activity that would*
25 *otherwise be unlawful under the laws of this state or of the United*
26 *States.*

27 (h) *The taxes imposed by this measure are not intended to affect,*
28 *or in any way limit, the ability of local governments to address the*
29 *negative secondary effects of adult entertainment venues.*

30 SEC. 2. *Section 6011 of the Revenue and Taxation Code is*
31 *amended to read:*

32 6011. (a) "Sales price" means the total amount for which
33 tangible personal property is sold or leased or rented, as the case
34 may be, valued in money, whether paid in money or otherwise,
35 without any deduction on account of any of the following:

36 (1) The cost of the property sold.

37 (2) The cost of materials used, labor or service cost, interest
38 charged, losses, or any other expenses.

39 (3) The cost of transportation of the property, except as excluded
40 by other provisions of this section.

1 (b) The total amount for which the property is sold or leased or
2 rented includes all of the following:

3 (1) Any services that are a part of the sale.

4 (2) Any amount for which credit is given to the purchaser by
5 the seller.

6 (3) The amount of any tax imposed by the United States upon
7 producers and importers of gasoline and the amount of any tax
8 imposed pursuant to Part 2 (commencing with Section 7301) of
9 this division.

10 (c) "Sales price" does not include any of the following:

11 (1) Cash discounts allowed and taken on sales.

12 (2) The amount charged for property returned by customers
13 when that entire amount is refunded either in cash or credit, but
14 this exclusion shall not apply in any instance when the customer,
15 in order to obtain the refund, is required to purchase other property
16 at a price greater than the amount charged for the property that is
17 returned. For the purpose of this section, refund or credit of the
18 entire amount shall be deemed to be given when the purchase price
19 less rehandling and restocking costs are refunded or credited to
20 the customer. The amount withheld for rehandling and restocking
21 costs may be a percentage of the sales price determined by the
22 average cost of rehandling and restocking returned merchandise
23 during the previous accounting cycle.

24 (3) The amount charged for labor or services rendered in
25 installing or applying the property sold.

26 (4) (A) The amount of any tax (not including, however, any
27 manufacturers' or importers' excise tax, except as provided in
28 subparagraph (B)) imposed by the United States upon or with
29 respect to retail sales whether imposed upon the retailer or the
30 consumer.

31 (B) The amount of manufacturers' or importers' excise tax
32 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
33 Code for which the purchaser certifies that he or she is entitled to
34 either a direct refund or credit against his or her income tax for
35 the federal excise tax paid or for which the purchaser issues a
36 certificate pursuant to Section 6245.5.

37 (5) The amount of any tax imposed by any city, county, city
38 and county, or rapid transit district within the State of California
39 upon or with respect to retail sales of tangible personal property,

1 measured by a stated percentage of sales price or gross receipts,
2 whether imposed upon the retailer or the consumer.

3 (6) The amount of any tax imposed by any city, county, city
4 and county, or rapid transit district within the State of California
5 with respect to the storage, use or other consumption in that city,
6 county, city and county, or rapid transit district of tangible personal
7 property measured by a stated percentage of sales price or purchase
8 price, whether the tax is imposed upon the retailer or the consumer.

9 (7) Separately stated charges for transportation from the
10 retailer's place of business or other point from which shipment is
11 made directly to the purchaser, but the exclusion shall not exceed
12 a reasonable charge for transportation by facilities of the retailer
13 or the cost to the retailer of transportation by other than facilities
14 of the retailer. However, if the transportation is by facilities of the
15 retailer, or the property is sold for a delivered price, this exclusion
16 shall be applicable solely with respect to transportation which
17 occurs after the purchase of the property is made.

18 (8) Charges for transporting landfill from an excavation site to
19 a site specified by the purchaser, either if the charge is separately
20 stated and does not exceed a reasonable charge or if the entire
21 consideration consists of payment for transportation.

22 (9) The amount of any motor vehicle, mobilehome, or
23 commercial coach fee or tax imposed by and paid the State of
24 California that has been added to or is measured by a stated
25 percentage of the sales or purchase price of a motor vehicle,
26 mobilehome, or commercial coach.

27 (10) (A) The amount charged for intangible personal property
28 transferred with tangible personal property in any technology
29 transfer agreement, if the technology transfer agreement separately
30 states a reasonable price for the tangible personal property.

31 (B) If the technology transfer agreement does not separately
32 state a price for the tangible personal property, and the tangible
33 personal property or like tangible personal property has been
34 previously sold or leased, or offered for sale or lease, to third
35 parties at a separate price, the price at which the tangible personal
36 property was sold, leased, or offered to third parties shall be used
37 to establish the retail fair market value of the tangible personal
38 property subject to tax. The remaining amount charged under the
39 technology transfer agreement is for the intangible personal
40 property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

(12) (A) The amount of tax imposed by any Indian tribe within the State of California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

(B) The exclusion authorized by subparagraph (A) shall only apply to those retailers who are in substantial compliance with this part.

(13) The amount of any tax imposed pursuant to Part 14.5 (commencing with Section 33001) of this division.

SEC. 3. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) “Gross receipts” mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with any rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business.

1 If that deduction is taken by the retailer, no refund or credit will
2 be allowed to his or her vendor with respect to the sale of the
3 property.

4 (2) The cost of the materials used, labor or service cost, interest
5 paid, losses, or any other expense.

6 (3) The cost of transportation of the property, except as excluded
7 by other provisions of this section.

8 (4) The amount of any tax imposed by the United States upon
9 producers and importers of gasoline and the amount of any tax
10 imposed pursuant to Part 2 (commencing with Section 7301) of
11 this division.

12 (b) The total amount of the sale or lease or rental price includes
13 all of the following:

14 (1) Any services that are a part of the sale.

15 (2) All receipts, cash, credits and property of any kind.

16 (3) Any amount for which credit is allowed by the seller to the
17 purchaser.

18 (c) "Gross receipts" do not include any of the following:

19 (1) Cash discounts allowed and taken on sales.

20 (2) Sale price of property returned by customers when that entire
21 amount is refunded either in cash or credit, but this exclusion shall
22 not apply in any instance when the customer, in order to obtain
23 the refund, is required to purchase other property at a price greater
24 than the amount charged for the property that is returned. For the
25 purpose of this section, refund or credit of the entire amount shall
26 be deemed to be given when the purchase price less rehandling
27 and restocking costs are refunded or credited to the customer. The
28 amount withheld for rehandling and restocking costs may be a
29 percentage of the sales price determined by the average cost of
30 rehandling and restocking returned merchandise during the
31 previous accounting cycle.

32 (3) The price received for labor or services used in installing or
33 applying the property sold.

34 (4) (A) The amount of any tax (not including, however, any
35 manufacturers' or importers' excise tax, except as provided in
36 subparagraph (B)) imposed by the United States upon or with
37 respect to retail sales whether imposed upon the retailer or the
38 consumer.

39 (B) The amount of manufacturers' or importers' excise tax
40 imposed pursuant to Section 4081 or 4091 of the Internal Revenue

1 Code for which the purchaser certifies that he or she is entitled to
2 either a direct refund or credit against his or her income tax for
3 the federal excise tax paid or for which the purchaser issues a
4 certificate pursuant to Section 6245.5.

5 (5) The amount of any tax imposed by any city, county, city
6 and county, or rapid transit district within the State of California
7 upon or with respect to retail sales of tangible personal property
8 measured by a stated percentage of sales price or gross receipts
9 whether imposed upon the retailer or the consumer.

10 (6) The amount of any tax imposed by any city, county, city
11 and county, or rapid transit district within the State of California
12 with respect to the storage, use or other consumption in that city,
13 county, city and county, or rapid transit district of tangible personal
14 property measured by a stated percentage of sales price or purchase
15 price, whether the tax is imposed upon the retailer or the consumer.

16 (7) Separately stated charges for transportation from the
17 retailer's place of business or other point from which shipment is
18 made directly to the purchaser, but the exclusion shall not exceed
19 a reasonable charge for transportation by facilities of the retailer
20 or the cost to the retailer of transportation by other than facilities
21 of the retailer. However, if the transportation is by facilities of the
22 retailer, or the property is sold for a delivered price, this exclusion
23 shall be applicable solely with respect to transportation which
24 occurs after the sale of the property is made to the purchaser.

25 (8) Charges for transporting landfill from an excavation site to
26 a site specified by the purchaser, either if the charge is separately
27 stated and does not exceed a reasonable charge or if the entire
28 consideration consists of payment for transportation.

29 (9) The amount of any motor vehicle, mobilehome, or
30 commercial coach fee or tax imposed by and paid to the State of
31 California that has been added to or is measured by a stated
32 percentage of the sales or purchase price of a motor vehicle,
33 mobilehome, or commercial coach.

34 (10) (A) The amount charged for intangible personal property
35 transferred with tangible personal property in any technology
36 transfer agreement, if the technology transfer agreement separately
37 states a reasonable price for the tangible personal property.

38 (B) If the technology transfer agreement does not separately
39 state a price for the tangible personal property, and the tangible
40 personal property or like tangible personal property has been

1 previously sold or leased, or offered for sale or lease, to third
2 parties at a separate price, the price at which the tangible personal
3 property was sold, leased, or offered to third parties shall be used
4 to establish the retail fair market value of the tangible personal
5 property subject to tax. The remaining amount charged under the
6 technology transfer agreement is for the intangible personal
7 property transferred.

8 (C) If the technology transfer agreement does not separately
9 state a price for the tangible personal property, and the tangible
10 personal property or like tangible personal property has not been
11 previously sold or leased, or offered for sale or lease, to third
12 parties at a separate price, the retail fair market value shall be equal
13 to 200 percent of the cost of materials and labor used to produce
14 the tangible personal property subject to tax. The remaining amount
15 charged under the technology transfer agreement is for the
16 intangible personal property transferred.

17 (D) For purposes of this paragraph, “technology transfer
18 agreement” means any agreement under which a person who holds
19 a patent or copyright interest assigns or licenses to another person
20 the right to make and sell a product or to use a process that is
21 subject to the patent or copyright interest.

22 (11) The amount of any tax imposed upon diesel fuel pursuant
23 to Part 31 (commencing with Section 60001).

24 (12) (A) The amount of tax imposed by any Indian tribe within
25 the State of California with respect to a retail sale of tangible
26 personal property measured by a stated percentage of the sales or
27 purchase price, whether the tax is imposed upon the retailer or the
28 consumer.

29 (B) The exclusion authorized by subparagraph (A) shall only
30 apply to those retailers who are in substantial compliance with this
31 part.

32 For purposes of the sales tax, if the retailers establish to the
33 satisfaction of the board that the sales tax has been added to the
34 total amount of the sale price and has not been absorbed by them,
35 the total amount of the sale price shall be deemed to be the amount
36 received exclusive of the tax imposed. Section 1656.1 of the Civil
37 Code shall apply in determining whether or not the retailers have
38 absorbed the sales tax.

39 (13) *The amount of any tax imposed pursuant to Part 14.5*
40 *(commencing with Section 33001) of this division.*

1 *SEC. 4. Part 14.5 (commencing with Section 33001) is added*
2 *to Division 2 of the Revenue and Taxation Code, to read:*

3
4 *PART 14.5. ADULT ENTERTAINMENT VENUE TAX*
5

6 33001. *Except where the context otherwise requires, the*
7 *definitions set forth in Part 1 (commencing with Section 6001)*
8 *govern the construction of this part.*

9 33002. *For purposes of this part, the following definitions*
10 *apply:*

11 (a) (1) *“Adult entertainment venue” means any of the following:*

12 (A) *A retail establishment whose gross receipts from the sale*
13 *or rental of adult material exceed 50 percent of all gross receipts*
14 *of the retail establishment.*

15 (B) *The premises of any facility located in California that*
16 *provides a public or private viewing of adult material.*

17 (C) *The public premises of any facility located in California*
18 *that offers live sexually explicit conduct that is prohibited to*
19 *audiences under 18 years of age or 21 years of age, depending on*
20 *whether alcoholic beverages are sold on the premises.*

21 (2) *“Adult entertainment venue” shall not mean a business*
22 *whose primary purpose is the provision of live performances that*
23 *may include the display of complete nudity, so long as the live*
24 *performance is a legitimate play, opera, ballet, or concert at a*
25 *concert house, playhouse or theater, museum, or educational*
26 *institution or facility on whose premises alcoholic beverages may*
27 *be sold but which derives less than 20 percent of its gross receipts*
28 *from the sale of alcoholic beverages.*

29 (b) *“Adult material” includes, but is not limited to, all of the*
30 *following:*

31 (1) *Harmful matter, as defined in Section 313 of the Penal Code.*

32 (2) *Live sexually explicit conduct provided at a business*
33 *establishment.*

34 (3) *Any item that includes sexually explicit conduct or is subject*
35 *to the requirements of Section 2257 of Title 18 of the United States*
36 *Code.*

37 (c) *“Gross receipts” includes receipts, from whatever source,*
38 *received by the adult entertainment venue, excepting any sales*
39 *taxes imposed on the transaction.*

1 (d) “Sexually explicit conduct” means any of the following
2 actual, but not simulated, conduct:

3 (1) Sexual intercourse, including genital-genital, oral-genital,
4 anal-genital, or oral-anal, whether between persons of the same
5 or opposite sex.

6 (2) Masturbation.

7 (3) Sadistic or masochistic abuse.

8 (4) Lascivious exhibition of the genitals or pubic area of any
9 person.

10 33003. On or after October 1, 2009, in addition to any tax
11 imposed under Chapter 2 (commencing with Section 6051) of Part
12 1, a tax is hereby imposed upon the privilege of selling tangible
13 personal property at retail in this state at an adult entertainment
14 venue at the rate of 20 percent of the gross receipts from the retail
15 sale of tangible personal property.

16 33004. To the extent feasible or practicable, Section 1656.1
17 of the Civil Code, and the provisions of Part 1 (commencing with
18 Section 6001) shall govern determinations, collections of tax,
19 overpayments and refunds, and administration under this part.

20 33005. The board shall enforce the provisions of this part and
21 may prescribe, adopt, and enforce rules and regulations relating
22 to the administration and enforcement of this part. The board may
23 prescribe the extent to which any ruling or regulation shall be
24 applied without retroactive effect.

25 33006. (a) All amounts required to be paid to the state under
26 this part shall be paid to the board in the form of remittances
27 payable to the State Board of Equalization. It is the intent of the
28 Legislature that the board shall transmit the payments, less refunds
29 and the board’s costs of administration, to the Treasurer to be
30 deposited in the State Treasury to the credit of the Adult
31 Entertainment Impact Fund, which is hereby created.

32 (b) Moneys in the Adult Entertainment Impact Fund shall, upon
33 appropriation by the Legislature, be used to ameliorate the
34 secondary effects of adult entertainment venues. Amelioration of
35 secondary effects includes, but is not limited to:

36 (1) Increased funding to state and local law enforcement to
37 combat any increased criminal activity in the vicinity of adult
38 entertainment venues including, but not limited to, criminal activity
39 like the illegal sale of controlled substances, prostitution, and
40 crimes against women.

1 (2) *Programs to address the negative secondary effects of adult*
2 *entertainment venues on property values.*

3 (3) *Provision of funding to address related health issues,*
4 *including the testing and treatment of sexually transmitted diseases*
5 *and mental health treatment.*

6 (4) *Supplemental funding for existing state and local substance*
7 *abuse treatment programs.*

8 SEC. 5. *Notwithstanding Section 2230 of the Revenue and*
9 *Taxation Code, no appropriation is made by this act and the state*
10 *shall not reimburse any local agency for any sales and use tax*
11 *revenues lost by it under this act.*

12 SEC. 6. *This act provides for a tax levy within the meaning of*
13 *Article IV of the Constitution and shall go into immediate effect.*

14 ~~SECTION 1. Section 6396 of the Revenue and Taxation Code~~
15 ~~is repealed.~~

16 ~~SEC. 2. This act provides for a tax levy within the meaning of~~
17 ~~Article IV of the Constitution and shall go into immediate effect.~~
18 ~~However, the provisions of this act shall become operative on the~~
19 ~~first day of the first calendar quarter commencing more than 90~~
20 ~~days after the effective date of this act.~~